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May 15, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Amendment to the Commission's Rules Concerning Effective Competition
and Implementation of Section 111 of the STELA Reauthorization Act, MB
Docket No. 15-53 – Written Ex Parte Communication**

Dear Ms. Dortch:

On May 13, 2015, Stephanie Podey, NCTA Vice President and Associate General Counsel; Diane Burstein, NCTA Vice President and Deputy General Counsel; and I met with Robin Colwell, Chief of Staff and Senior Legal Advisor to Commissioner Michael O'Rielly, and Chanelle Hardy, Chief of Staff and Legal Advisor to Commissioner Mignon Clyburn. On May 14, 2015, I spoke by telephone with Matthew Berry, Chief of Staff to Commissioner Ajit Pai. We discussed NCTA's written comments in the above-captioned proceeding.

We discussed how the record fully supports the Commission's proposal to adopt a rebuttable presumption that cable operators face "effective competition" nationwide. The record shows that the availability of multichannel competitive alternatives to cable, once limited to relative handful of communities, is now ubiquitous, and that there has been a significant decline in cable's share of multichannel video customers since the existing presumption was adopted more than two decades ago. Among other things, we pointed to NCTA's analysis of DMA data, which shows competitors with subscribership exceeding 15 percent penetration in every one of the 210 DMAs nationwide.¹ We discussed the need for the Commission to update its effective competition rules to reflect these marketplace realities, and noted that the Progressive Policy Institute had recently issued a blog post supporting the proposed change to this outdated rule.²

¹ NCTA Reply Comments at 2.

² <http://www.progressivepolicy.org/blog/mandel-eliminating-an-obsolete-regulation-at-the-fcc/> (attached).

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Finally, we pointed out that opponents of reversing the presumption provided no evidence of consumer harm. Moreover, even if the Commission were to change the rebuttable presumption, the availability of must carry broadcast stations still would be governed by the separate provisions of Sections 614 and 615 of the 1992 Cable Act.

Respectfully submitted,

/s/ Rick Chessen

Rick Chessen

cc: M. Berry
R. Colwell
C. Hardy

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Mandel: Eliminating an Obsolete Regulation at the FCC

05/13/2015 | Blog | By Michael Mandel

PPI favors the elimination or rewriting of outmoded regulations wherever possible. We believe that clearing the deadwood of obsolete rules is a win-win for consumers, workers, and businesses, allowing regulators to focus limited resources on more important issues while freeing companies to innovate faster.

That's why we strongly favor FCC Chairman Tom Wheeler's proposal to streamline the "effective competition" rule for cable video providers. Cable television has long been one of the most regulated industries in the economy, including regulation of their rates by local authorities. The justification for such price controls—not acceptable for most industries—was the lack of meaningful competition from other video providers.

But the world has changed. Today many if not most cable video systems face a wide range of competitors from satellite providers such as DISH and telecom companies such as AT&T and Verizon, not to mention new internet-based video services such as Netflix and Amazon.

The legislation governing cable operators allows them to be relieved of some regulatory burdens—including rate regulation by local authorities—if the FCC rules that they face "effective competition." The legislation includes several possible tests for effective competition, including a satellite video provider or other competitor having 15% of the pay video market, or if a phone company is offering video service in the area.

These hurdles are not hard to reach, given the prevalence of satellite and other video competitors. As a result, the FCC has ruled in favor of effective competition on almost all the hearings on this subject since 2013.

Nevertheless, up to now, cable video companies have had to go through a long and burdensome process to get regulatory relief. That is why Wheeler is proposing to simplify the process by adapting it to market realities. Challengers would have to demonstrate that effective competition did not exist in a particular location. The net result is that a larger number of cable video providers would have greater freedom to compete and innovate.

Given the amount of competition to cable, it is unlikely that cable video rates would suddenly jump. After all, with the prevalence of alternatives, and subscriber growth having topped out, why should cable companies drive away customers?

We have had disagreements with Chairman Wheeler, particularly around the Open Internet issue. But on this issue, his approach to cleaning up the regulatory process makes excellent sense for both consumers and companies.

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Tagged Communications, Innovation, Regulatory Reform, Reinventing Regulation, Telecom

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